

AN ACT

To repeal section 188.028, RSMo, and to enact in lieu thereof seven new sections relating to parental notification for abortion, with a penalty provision.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Section 188.028, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 188.028, 188.255, 188.258, 188.261, 188.264, 188.267, and 188.270, to read as follows:

188.028. 1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:

(1) The attending physician has notified a parent or relative of the minor under sections 188.260 to 188.???, and secured the informed written consent of the minor and one parent or guardian; or

(2) The minor is emancipated and the attending physician has received the informed written consent of the minor; or

(3) The minor has been granted the right to self-consent to the abortion by court order pursuant to subsection 2 of this section, and the attending physician has received the informed written consent of the minor; or

(4) The minor has been granted consent to the abortion by court order, and the court has given its informed written consent

in accordance with subsection 2 of this section, and the minor is having the abortion willingly, in compliance with subsection 3 of this section.

2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be granted by a court pursuant to the following procedures:

(1) The minor or next friend shall make an application to the juvenile court which shall assist the minor or next friend in preparing the petition and notices required pursuant to this section. The minor or the next friend of the minor shall thereafter file a petition setting forth the initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis of the minor; that the minor has been fully informed of the risks and consequences of the abortion; that the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion; that, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion; that the court should appoint a guardian ad litem of the child; and if the minor does not have private counsel, that the court should appoint counsel. The petition shall be signed by the minor or

the next friend;

(2) A hearing on the merits of the petition, to be held on the record, shall be held as soon as possible within five days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least twenty-four hours before the time of the hearing. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interests of the minor;

(3) In the decree, the court shall for good cause:

(a) Grant the petition for majority rights for the purpose of consenting to the abortion; or

(b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or

(c) Deny the petition, setting forth the grounds on which the petition is denied;

(4) If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights, or the judicial consent, shall bar an action by the parents or guardian of the minor on the grounds of battery of the minor by those

performing the abortion. The immunity granted shall only extend to the performance of the abortion in accordance herewith and any necessary accompanying services which are performed in a competent manner. The costs of the action shall be borne by the parties;

(5) An appeal from an order issued under the provisions of this section may be taken to the court of appeals of this state by the minor or by a parent or guardian of the minor. The notice of intent to appeal shall be given within twenty-four hours from the date of issuance of the order. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of notice to appeal. Because time may be of the essence regarding the performance of the abortion, the supreme court of this state shall, by court rule, provide for expedited appellate review of cases appealed under this section.

3. If a minor desires an abortion, then she shall be orally informed of and, if possible, sign the written consent required by section 188.039 in the same manner as an adult person. No abortion shall be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in subdivision (4) of subsection 1 of this section that the abortion is necessary to preserve the life of the minor.

188.255. 1. Sections 188.255 to 188.270 shall be known and may be cited as the "Missouri Parental Notification Act".

2. As used in sections 188.255 to 188.270, the following terms mean:

(1) "Abortion", the use of any means to terminate the pregnancy of a minor with knowledge that the termination by such means will, with reasonable likelihood, cause the death of the minor's unborn offspring;

(2) "Clergy member", a priest, a rabbi, a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a recognized leader of any religious body;

(3) "Medical emergency", a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate a medical procedure necessary to prevent the pregnant minor's death for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function;

(4) "Minor", a person less than eighteen years of age;

(5) "Parent", the natural or adoptive mother and father of a minor who is pregnant, if they are both living; one parent of such minor if only one parent is living or if the other parent cannot be served with notice, as hereinafter provided; or the court-appointed guardian of such minor if she has one or any foster parent to whom the care and custody of such minor shall have been assigned by any agency of the state or county making such placement;

(6) "Relative of the minor", a minor's grandparent, adult

aunt, or adult uncle, if the minor is not residing with a parent and resides with the grandparent, adult aunt, or adult uncle.

188.258. 1. No abortion shall be performed upon an unemancipated minor until at least forty-eight hours after written notice of the pending abortion has been delivered in the following manner:

(1) The notice shall be addressed to the parent at the residence or usual place of abode of the parent. Such notice shall be delivered to the parent by:

(a) The attending physician or member of the physician's immediate staff who is over the age of eighteen; or

(b) The sheriff or the sheriff's deputy of the county where the service of notice is made; or

(c) Any other person over the age of eighteen years who is not related to the minor; or

(d) A clergy member who is over the age of eighteen;

(2) Notice delivered by any person other than the attending physician shall be furnished to and delivered by such person in a sealed envelope marked "Personal and Confidential" and its contents shall not in any manner be revealed to the person making such delivery;

(3) Whenever the parent of the minor includes two persons to be notified as provided in sections 188.255 to 188.270 and such persons reside at the same residence or place of abode, delivery to one such person shall constitute delivery to both

persons, and the forty-eight-hour period shall commence when delivery is made. If such persons do not reside together and delivery of notice can be made to each of them, notice shall be delivered to both parents, unless the minor requests that only one parent be notified, which request shall be honored and noted by the physician in the minor's medical record. If the parties are separately served notice, the forty-eight-hour period shall commence upon delivery of the first notice;

(4) The person delivering such notice, if other than the physician, shall provide to the physician a written return of service at the earliest practical time, as follows:

(a) If served by the sheriff or the sheriff's deputy, by his or her certificate with a statement as to date, place, and manner of service and the time such delivery was made;

(b) If by any other person, by his or her affidavit thereof with the same statement;

(c) Return of service shall be maintained by the physician;

(5) (a) In lieu of personal delivery of the notice, the same may be sent by postpaid certified mail, addressed to the parent at the parent's residence or usual place of abode, with return receipt requested and delivery restricted to the addressee. Delivery shall be conclusively presumed to occur and the forty-eight-hour time period as provided in sections 188.255 to 188.270 shall commence to run at noon on the next day on which regular mail delivery takes place.

(b) Whenever the parent of the minor includes two persons to be notified as provided in sections 188.255 to 188.270 and such persons reside at the same dwelling house or place of abode, notice addressed to one parent and mailed as provided in paragraph (a) of this subdivision shall be deemed to be delivery of notice to both such persons. If such persons do not reside together and notice can be mailed to each of them, such notice shall be separately mailed to both parents unless the minor requests that only one parent shall be notified, which request shall be honored and noted by the physician in the minor's medical record.

(c) Proof of mailing and delivery or attempted delivery shall be maintained by the physician.

2. (1) Notwithstanding the provisions of subsection 1 of this section, if the minor is residing with a relative of the minor and not a parent, the written notice of the pending abortion shall be provided to either the relative of the minor or a parent.

(2) If a minor elects to provide notice to a person specified in subdivision (1) of this subsection, the notice shall be provided in accordance with subsection 1 of this section.

(3) At the time the physician, licensed health care professional, or staff of the physician or licensed health care professional informs the minor that notice must be provided to the minor's parents prior to performing an abortion, the

physician, licensed health care professional, or the staff of the physician or licensed health care professional must inform the minor under what circumstances the minor has the right to have only one parent notified.

188.261. No notice shall be required under sections 188.255 to 188.270 if:

(1) The person or persons who may receive notice under subsection 1 of section 188.258 or the person whom the minor elects to notify under subsection 2 of section 188.258 certifies in writing that he or she has been notified; or

(2) The pregnant minor declares that she is a victim of abuse or neglect, as defined in section 210.110, RSMo, by the acts or omissions of the person who would have been entitled to notice and the attending physician has reported such child abuse or neglect under chapter 210, RSMo. When reporting such child abuse or neglect, the physician shall not reveal that he or she learned of the abuse or neglect as the result of the minor seeking an abortion; or

(3) The attending physician certifies in the pregnant minor's medical record that a medical emergency exists and there is insufficient time to provide notice under section 188.258; or

(4) A valid court order is issued under section 188.267.

188.264. 1. Any person who performs or attempts to perform an abortion in willful violation of sections 188.255 to 188.270 shall be liable for damages proximately caused thereby.

2. It shall be an affirmative defense to any civil proceedings if the person establishes that:

(1) The person relied upon facts or information insufficient to convince a reasonable, careful, and prudent person that the representations of the pregnant minor regarding information necessary to comply with sections 188.255 to 188.270 were bona fide and true; or

(2) The abortion was performed to prevent the imminent death of the minor child and there was insufficient time to provide the required notice.

3. Any person who counsels, advises, encourages, or conspires to induce or persuade any pregnant minor to furnish any physician with false information, whether oral or written, concerning the minor's age, marital status, or any other fact or circumstance to induce or attempt to induce the physician to perform an abortion upon such minor without providing written notice as required by sections 188.255 to 188.270 is guilty of a class D felony.

188.267. 1. If any pregnant minor elects not to allow the notification required in section 188.258, any court of competent jurisdiction shall, upon petition filed by or on behalf of such minor, enter an order dispensing with the notice requirements of sections 188.255 to 188.270 if the court determines that the giving of such notice is not in the best interest of the minor, or if the court finds, by clear and convincing evidence, that the

minor is sufficiently mature to decide whether to have an abortion. Any such order shall include specific factual findings and legal conclusions in support thereof and a certified copy of such order shall be provided to the attending physician of such minor, and the provisions of subsection 1 of section 188.258 and section 188.264 shall not apply to the physician with respect to such minor.

2. The court, in its discretion, may appoint a guardian ad litem for the minor and an attorney if such minor is not represented by counsel.

3. Court proceedings under this section shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly without delay in order to serve the best interests of the minor. Court proceedings under this section shall be heard and decided as soon as practicable, but in no event later than four days after the petition is filed.

4. Notwithstanding any other provision of law, an expedited confidential appeal to the court of appeals shall be available to a minor for whom the court denies an order dispensing with the notice requirements of sections 188.255 to 188.270. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order dispensing with the notice requirements of sections 188.255 to 188.270 shall not be subject to appeal.

5. Notwithstanding any provision of law to the contrary, the minor is not required to pay a filing fee related to an action or appeal filed under this section.

6. If either the district court or the court of appeals fails to act within the time periods required in this section, the court in which the proceeding is pending shall immediately issue an order dispensing with the notice requirements of sections 188.255 to 188.270.

7. The Missouri supreme court shall issue rules governing the judicial bypass procedure, including rules that ensure the confidentiality of minors filing bypass petitions will be protected. The Missouri supreme court shall also promulgate a form petition that may be used to initiate a bypass proceeding. The Missouri supreme court shall promulgate the rules and form governing the judicial bypass procedure by September 1, 2004. Physicians shall not be required to comply with sections 188.255 to 188.270 until forty-five days after the Missouri supreme court publishes final rules and a final form.

188.270. 1. Sections 188.255 to 188.270 shall not be construed to:

- (1) Require any minor to submit to an abortion; or
- (2) Prevent any minor from withdrawing her consent previously given to have an abortion; or
- (3) Permit anything less than fully informed consent before submitting to an abortion.

2. Sections 188.255 to 188.270 shall not be construed as either ratifying, granting, or otherwise establishing an abortion right for minors independently of any other rule, statute, or court decision which may now or hereafter limit or abridge access to abortion by minors.